

**REMARKS**

Favorable reconsideration of the above identified application is requested in view of the following remarks.

The Official Action finally rejects Claims 1-6, 11-12 and 14-17 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,518,479, hereinafter *Grafe*, in view of U.S. Patent No. 5,713,881, hereinafter *Rezai*.

Claim 1 recites in pertinent part: an absorbent structure that comprises at least two integrated layers of foam material having different mean pore sizes, wherein the layers are formed by placing one on top of the other before they are dry so that the layers partly penetrate into each other so that there is no clear partitioning line between the layers, wherein the foam material is regenerated cellulose.

The primary reference upon which the Examiner relies, *Grafe*, discloses an absorbent article containing a stratified composite composed of a first stratum and a second stratum that are integrally connected by a transition zone, *i.e.*, commingle. As disclosed throughout *Grafe*, the stratum are fibers and do not include foam material. In fact, the stratum are formed by dispersing the fibers in a foamed liquid and then draining them by a vacuum to remove the foam, thereby leaving a fibrous sheet (column 18, lines 18-30). Thus, Applicants submit that the fibrous material of *Grafe* is not a foam structure as recited in claim 1.

The Official Action recognized that *Grafe* does not disclose a regenerated cellulose foam material and relies upon *Rezai* for a disclosure of the same. The portion of *Rezai* referred to in the Official Action (column 21, lines 18-25) discloses a cellulose foam layer that is part of a substrate layer of the article. The Official Action proposes that it would have been obvious to modify *Grafe* to include *Rezai's* foam to arrive at the claimed subject matter.



In the previous Response Applicants argued that neither *Grafe* nor *Rezai* disclose, and would not have directed one skilled in the art to arrive at, the claimed subject matter relating to two foam layers having no clear partitioning line. The Official Action maintains the rejections and states that Applicants' arguments were not persuasive because they merely attacked each cited document individually, *i.e.*, that Applicants pointed out deficiencies in each individual reference and not the combination. Applicants respectfully traverse the Examiner's position on this matter. That is, in the previous response, Applicants pointed out that neither cited document discloses configuring regenerated foam in the claimed manner, meaning that both references fail to disclose or suggest that claimed feature, either alone or in combination. Though *Grafe* discloses commingling layers of fibers, the layers of fibers are not layers of regenerated cellulose foam. Therefore, *Grafe* does not disclose at least: no clear partitioning line between two layers of foam. Though each document was addressed separately, Applicants clearly argued that neither reference, alone or in combination, disclosed or suggested the claimed feature relating to two layers of foam that have no clear partitioning line.

Expanding on that point, Claim 1 is allowable for at least the following reasons.

First, the foam in *Rezai* is significantly different than the layers of fibers in *Grafe*, and there is no suggestion that would have directed a skilled person to treat the two similarly. For example, there is no disclosure that would indicate that the foam in *Rezai* can be formed like the fibers in *Grafe* because a skilled person would not expect a cellulose foam to be deposited in the same way as the fibers. The fibers in *Grafe* are formed by dispersing the fibers in a foamed liquid and then drained by a vacuum to remove the foam, thereby leaving a fibrous sheet (column



18, lines 18-30). Therefore, when read in entirety for the teaching of the whole document, it is apparent that the primary reference actually teaches away from the use of foam layers. Accordingly, Applicants submit there is no motivation or suggestion to modify the disclosed fiber layers with a foam material.

Second, based on the significant differences between the fibers and the foam, a skilled person would have had no expectation of success, given the context of both disclosures. Disclosure of successfully layering fibers would not lead one to expect success by similarly layering foam as claimed.

Third, the foam identified in *Rezai* is part of the substrate layer that is provided for support of the macrostructure. That is, *Rezai* a structure in which particles of regenerated cellulose foam material are distributed in absorbent gelling material. The main component in the structure is a porous macrostructure of absorbent gelling material, and the particles of regenerated cellulose are only distributed in the porous macrostructure. See column 20, lines 25-26 that states: "[m]ost such substrates can serve both as distributing means and a support means for the absorbent macrostructure layer." This structure is very different from that claimed in claim 1.

If the primary reference is modified based upon the context of *Rezai's* disclosure, Applicants submit the fibers in *Grafe* would have been considered the macrostructure and would therefore be supported by the foam of *Rezai* -- not completely replaced as the Examiner contends. That is, a skilled person would not be directed to form the foam of *Rezai* (substrate) into two commingled layers like the fibers (macrostructure) of *Grafe*. Therefore, even if one were to introduce the teaching of the foam in *Rezai* to the article of *Grafe*, it would merely be to support the fibers and there would be no direction to form two foam layers as claimed. That is, if



the foam does not serve the purpose of the fibers, one would not understand to layer the foam as claimed.

In sum, it appears that the rejection is based on a impermissible hindsight review. That is, neither reference discloses or suggests two layers of regenerated foam with no clear partitioning line. That idea could only have been gleaned after referring to the present specification.

For at least the reasons stated above, there would have been no motivation to make the suggested modifications to *Grafe* and the subject matter of Claim 1 is not disclosed or suggested.

Claims 17 and 18 are allowable for similar reasons as Claim 1 with regard to similar claim language.

Claims 2-4, 6, 11, 12 and 15-16 depend from Claim 1 and are therefore allowable for at least the same reasons.

For the reasons stated above, it is requested that all the rejections be withdrawn and that this application be allowed in a timely manner.



Should any questions arise in connection with this application, or should the Examiner feel that a teleconference with the undersigned would be helpful in resolving any remaining issues pertaining to this application, it is requested that the undersigned be contacted at the number indicated below.

Respectfully submitted,

Buchanan Ingersoll & Rooney PC

Date: September 11, 2006

By:

Wendi Weinstein

Wendi L. Weinstein

Registration No. 34,456

P.O. Box 1404  
Alexandria, Virginia 22313-1404  
(703) 836-6620